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Legal and institutional framework for transit operations: current situation and proposals for improvement

Report by the UNCTAD secretariat*

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INTRODUCTION

1. Transit traffic operations are governed by a web of domestic legislation and administrative procedures in force in both land-locked and transit countries. They are supplemented by bilateral and subregional agreements or arrangements and international conventions to which those countries may be parties. This paper reviews the current status of the legal framework and makes some proposals for its improvement.

2. Section I highlights the salient features and status of the major relevant international conventions related to transit traffic operations. These conventions provide broad guidelines, which have assisted land-locked countries and their transit neighbours in drawing up their national, bilateral and subregional transit regulations and administrative procedures as well as the agreements related to transit facilities and services.

3. Sections II and III discuss selected subregional arrangements and agreements and address the nature of bilateral transit agreements designed to facilitate the movement of transit cargoes. Section IV makes some proposals to strengthen the legal framework at the bilateral, subregional and international levels.

I. INTERNATIONAL CONVENTIONS RELATED TO TRANSIT TRAFFIC OPERATIONS

4. Several international conventions provide a valuable basis for tackling various problems related to transit traffic operations. However, the fact that most of the developing land-locked and transit countries have neither ratified nor even acceded to many of them has limited the impact which such a commitment to international standards and regulations would have had on national, bilateral and subregional transit arrangements and agreements.

A. Convention on Transit Trade of Land-locked States (1965)

1. Main features of the Convention

5. Following the initiative of the ECAFE Ministerial Conference held before the first session of UNCTAD, which recommended that the issue of the right of free transit for land-locked countries be given urgent and sympathetic consideration by the forthcoming UNCTAD session, a resolution was adopted at that session requesting the Secretary-General of UNCTAD to appoint a Committee to prepare a draft convention on the subject. The Convention was subsequently adopted by the United Nations Conference of Plenipotentiaries on Transit Trade of Land-locked Countries, which met in New York in June 1965.

6. Article 1 defines transit traffic as the passage of goods including unaccompanied baggage across the territory of a Contracting State (transit State) between a land-locked

State and the sea when the passage is a portion of a complete journey which begins or terminates within the territory of that land-locked State and which includes sea transport directly preceding or following such passage.

7. Article 2 affirms the right of freedom of transit, but it also provides that such freedom shall be granted under the terms of the Convention. Specifically, it provides that freedom of transit shall be granted to traffic in transit and means of transport and that such transit is to be provided on routes in use mutually acceptable for transit to the Contracting States concerned on a non-discriminatory basis.

8. Article 3 reiterates the principle also articulated in international customs conventions that the transit State should not impose on traffic in transit any customs duties or taxes except those levied solely to defray expenses of supervision and administration entailed by such transit, and that the rate of any such charges must correspond as nearly as possible with the expenses they are intended to cover.

9. The issues of transport and handling equipment, delay and fair service charges are addressed in article 4. It specifies that a transit State should provide, subject to availability, adequate means of transport and handling equipment for the movement of traffic in transit without unnecessary delay and that charges for such facilities should be reasonable as regards both their rates and the method of their application.

10. Article 5, while recognizing that transit States have the right to apply administrative and customs measures with respect to goods in transit, imposes an obligation to simplify such procedures in order to facilitate traffic. In other words, the article stipulates that Contracting States shall apply administrative and customs measures permitting the carrying out of free, uninterrupted and continuous traffic in transit and that they undertake to use simplified documentation and expeditious methods in regard to customs, transport and other administrative procedures relating to traffic in transit.

11. Ports and storage facilities, including establishment of free zones, are referred to in articles 6 and 8. These articles invite transit countries and their land-locked neighbours to conclude special agreements which would settle the conditions under which such facilities are granted.

12. Another article in the treaty of major importance is article 7, which stipulates that, except in the case of force majeure, delays in or restrictions on traffic should be avoided.

2. Status of ratification[1]

13. The Convention has been in force since 9 June 1967. Thirty States are contracting parties to the Convention. Among these 14 are developing land-locked countries and three are developing transit countries.

B. GATT article V

1. Main features of Art.V of the Agreement

14. Article V of GATT[2] also establishes elements for a legally valid framework for passage of goods in transit. Under the General Agreement, transit traffic is defined as traffic across the territory of a contracting party when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes.[3]

15. Contracting parties undertake to grant passage to goods in transit to and from other contracting States "via the routes most convenient for international transit..." and not to make a distinction in treatment based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.[4]

16. While goods in transit may be required to be entered at the proper customs house, such goods coming from or going to the territory of another contracting party, except in cases of failure to comply with applicable customs laws and regulations, should not be subject to any unnecessary delays or restrictions and should be exempt from customs duties and other duties and charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.[5] Article V stipulates that such charges and regulations should be reasonable, having regard to the conditions of the traffic and that such charges, regulations and formalities should be no less favourable than the treatment accorded to transit traffic to and from any third country.

17. Finally, contracting parties undertake to accord goods which have been in transit through the territory of another contracting party treatment no less favourable than that which would have been accorded to such goods had they been transported from their place of origin to their destination without going through the territory of such other contracting party.[6]

2. Status of ratification[7]

18. One hundred and four States are contracting parties to the GATT Agreement. Sixteen of these are land-locked developing countries and 21 are developing transit countries. This is by far the international Agreement most widely adhered to that is of relevance to transit issues.

C. United Nations Convention on the Law of the Sea

1. Main features of the Convention

19. Part X of the Convention establishes: the right of access to and from the sea and freedom of transit (article 125), exclusion of application of the most favoured-nation clause (article 126), exemption from customs duties, taxes and other charges (article 127), free zones and other customs facilities (article 128), co-operation in the construction and improvement of means of transport (article 129), measures to avoid or eliminate delays or other difficulties of a technical nature in traffic in transit (article 130), equal treatment in maritime ports (article 131), and granting of greater transit facilities (article 132).

2. Status of implementation[8]

20. Although the Convention has been signed by more than 100 States, only 55 States are contracting parties to the Convention. Five of these are land-locked developing countries and 12 are developing transit countries.

D. The TIR Convention

1. Main features of the Convention

21. The TIR Convention (1975)[9], which replaced an earlier version adopted in 1973, was initially restricted to the carriage of goods by road but it has been extended to cover other modes of transport (air, rail and multimodal transport), provided that part of the journey is by road. The TIR Convention enables a vehicle or container covered by a specific customs document, the TIR Carnet, to journey from its point of departure to its point of destination without undergoing any customs examination when crossing intermediate frontiers.

22. TIR carnets are issued by the secretariat of the International Road Transport Union (IRU) in Geneva and distributed to national associations representing IRU in the countries which are contracting parties to the Convention. To obtain a TIR carnet, the carrier must belong to a national association which can furnish professional and economic guarantees and which is authorized to issue carnets. Moreover, the vehicles and containers used must fulfil technical and other conditions laid down in the Convention.

23. Each national association stands guarantor, under an agreement with the customs authorities, for the duties and taxes payable on goods carried under cover of TIR carnets issued by it, or by any other member of the international chain of guaranteeing associations.

24. Similarly, the national guaranteeing association must sign an undertaking with IRU regulating the reciprocal rights and liabilities implicit in the operation of the TIR system.

25. The essential pillars of the TIR transit system are that: (1) goods should travel in secure vehicles or containers, (2) duties and taxes at risk should throughout the journey be covered by an internationally valid guarantee, (3) the goods should be accompanied by an internationally accepted carnet taken into use in the country of departure and accepted in the countries of transit and destination, and (4) customs control measures taken in the country of departure should be accepted by the countries of transit and destination.

26. A set of customs transit regulations such as those laid down in the TIR Convention is only one of the requisites for the international transport of goods. It is a necessary but not a sufficient condition, since other formalities must also be complied with at the national level and in bilateral relations between countries in order to ensure the efficiency of the operation. Nevertheless, the experience gathered in recent years in the countries that have acceded to the Convention shows that the TIR system is quite often the first stage on the way to greater harmonization and facilitation of international road transport.

27. To guarantee fully the payment amounts claimed on account of irregularities in a TIR operation, the IRU has negotiated a surety bond with a pool of international insurance companies.

28. The fact that countries as far away from Europe as the United States of America, and countries at different levels of development, such as Afghanistan, have adhered to the treaty attests to its responsiveness to modern needs and requirements in the international road haulage industry. A number of countries in the Middle East and North Africa have also adhered to the TIR convention.

2. Status of ratification[10]

29. Forty-one States are contracting parties to the Convention. One of these (Afghanistan) is a land-locked developing country and four of them are developing transit countries.

E. The Kyoto Convention

1. Main features of the Convention

30. The Kyoto Convention[11], which was elaborated under the auspices of the Customs Co-operation Council (CCC), is a comprehensive guide to the major customs procedures currently applied or recommended for application throughout the world. It is an invaluable source of assistance to administrations involved in the review or modernization of national customs legislation because it provides for the simplification and harmonization of customs import, export and transit procedures.

31. The 30 annexes of the Convention cover all the basic customs procedures in existence in countries members of the CCC. Through the Convention, a codification of customs procedures and, to a certain extent, of customs legislation has been achieved, which, together with existing reservations, constitutes a valuable source of information concerning the current customs procedures used by CCC member countries.

32. The Kyoto Convention offers a number of benefits to the economy as a whole, and to Customs administrations and the trading community in particular. Its main effect is to simplify and harmonize customs legislation and consequently to facilitate trade, as each country that accepts an annex undertakes to incorporate its principle in its customs legislation.

33. Like all CCC conventions, the Kyoto Convention prescribes only minimum facilities. This means that countries are not prevented from dealing with various matters covered by an annex in a more liberal manner. On the contrary, article 2 expressly states that contracting parties not only have the right to grant facilities greater than those provided for by the Convention, but are urged to do so as extensively as possible.

34. At the time of accession to the Convention a State has to accept at least one annex. Subsequently, each of the remaining annexes can be accepted individually. For the purposes of the rights and obligations of contracting parties, each of the annexes enables them to limit their obligations, at any time, to those specific sections of their legislation which they wish to modernize or align with international practice. It also helps countries to determine whether their procedures are already essentially aligned with the relevant annexes.

35. Annexes E.1 and F.1, devoted to procedures for "customs transit" and "free zones", respectively, are of particular relevance and importance to land-locked countries because the procedures outlined therein, if applied by the land-locked countries and their transit neighbours, could eliminate a great deal of problems facing transit traffic operations.

36. Annex E.1, with the objective of facilitating goods in transit, establishes recommended practices for national and international transit. It recommends, inter alia, that when goods are declared for transit the customs authorities at the office of departure should, unless in exceptional circumstances they deem it necessary to examine the goods, accept the seals affixed by the office of loading and the accompanying documents.[12]

37. Where the customs authorities exercise their right to examine goods declared for customs transit, they should limit the extent of their examination to that deemed necessary to ensure compliance of laws and regulations.

38. Annex E.1 recognizes the right of countries to prescribe the itinerary for goods to follow or require goods to be transported under customs escort but it states that such measures should only be considered when circumstances make their use indispensable.[13]

39. Lastly, Annex E.1 recommends that, when security is required to guarantee obligations arising from several customs operations, customs authorities should accept a general security, which should be discharged without delay when it has been established

to their satisfaction that the person responsible for the goods in transit has fulfilled his obligations.[14]

40. Annex F.1 concerning free zones sets out principles, standards and recommendations that provide a sound basis for formulating agreements between land-locked countries and their transit neighbours regarding the use of free zone facilities. "Free zones" are defined under Annex F.1 as parts of the territory of a State where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the customs territory and are not subject to the usual customs control.

41. Provided that an agreement has been reached on the kind of goods admissible to such zones and the nature of the operations to which the goods may be subjected, a broad range of operations can be undertaken at the free zones outside of customs control or intervention, such as the traditional activities of loading, unloading, transhipment and storage, as well as operations that may be necessary to preserve cargo, including grouping of packages, breaking bulk, grouping of packages, sorting, grading and repacking.[15]

2. Status of implementation[16]

42. Forty-eight States are contracting parties to the Convention. Six of these are developing land-locked countries and 15 are developing transit countries.

F. The International Convention on the Harmonization of Frontier Controls of Goods, 1982

1. Main features of the Convention

43. The need for harmonization of frontier controls can be appreciated when it is realized that, in addition to customs control, there are several other types of controls no less important, such as medico-sanitary, phytosanitary and veterinary inspections.[17] Tremendous delays in transit trade cannot be avoided if each country continues to apply its own procedures with little regard to the procedures applied elsewhere.

2. Status of implementation[18]

44. Twenty-one States are contracting parties to the Convention. Only one developing land-locked country (Lesotho) is among these.

G. The Customs Convention on Containers, 1972

1. Main features of the Convention

45. The convention which is widely adhered to in Europe facilitates the use of containers by granting temporary admission without the production of customs documents being required on their importation and re-exportation and without furnishing of a form of security. Although there are provisos that can be invoked to safeguard the right of Contracting parties to impose restrictions in appropriate cases, the right of temporary admission-coupled with undertakings that containers approved by a Contracting party for transportation of goods under customs seal-should be accepted by other Contracting Parties, as well as the security against pilferage and damage to goods inherent in the use of containers make them particularly suitable for transit traffic operations.

2. Status of implementation[19]

46. Twenty-six States are contracting parties of the Convention. Eight of these are developing countries, three of which are transit countries. Up to date none among them is a land-locked developing country.

H. International Convention concerning the Carriage of Goods by Rail

1. Main features of the Convention

47. The need to negotiate and establish an acceptable liability regime for railways operating in a railway network at a regional or subregional level becomes evident when it is appreciated that national railways are normally established under national legislations which shield them from civil claims as much as possible.[20] It has been said that national railways should be absolved from making substantial compensation payments because they provide public services at modest service charges. This argument, which was never particularly convincing in the past, is no longer valid because national railways are being mandated to operate on commercial lines. The time has therefore come for railways to be made to observe a high standard of care and to agree to pay reasonable compensation when they are at fault. This change should ideally apply to goods carried for the domestic market as well but its application is to railways involved in international carriage of goods.

48. The experience gained in operating a single uniform liability regime under the International Convention concerning the Carriage of Goods by Rail (CIM) in Europe could be brought to bear on other regions or subregions that may wish to benefit from such a regime.

49. Among the advantages of CIM is the establishment of collective responsibility of railways. The railway that accepts goods for carriage under an international consignment

note becomes responsible for the carriage over the entire route up to delivery. Each succeeding railway, by the very act of taking over the goods with the original consignment note, participates in the performance of the contract of carriage in accordance with the terms of that document and becomes subject to the obligations arising therefrom.[21]

50. An owner of goods which have been lost, damaged or delayed can bring action, against the forwarding railway, the railway of destination or the railway on which the cause of action arose. An action to recover sums paid under the contract of carriage may be brought either against the railway which collected the sum in question or against the railway on whose behalf the payment was received.[22]

51. The modern provisions under the CIM also respond to commercial needs, such as the right of the sender to modify the contract of carriage, for instance, by stopping or diverting goods in transit. Furthermore, the Convention expressly addresses the problem of delay in delivery of goods for which compensation is payable. It also prescribes payment of interest for late disbursement of compensation for loss or damage to goods or delay in delivery.

52. The opportunity afforded to cargo owners under CIM - enabling them to pay through freight for goods that may be carried by two or more railways and making it possible for them to pursue all claims at any one of the railway carriers[23] - is a valuable experience that can be replicated in other parts of the world to facilitate regional and transit trade.

2. Status of implementation[24]

53. Nineteen States are contracting parties to the Convention. Only one transit developing country (Algeria) is among these. No land-locked developing country is a contracting party.

I. Convention on the Contract for the International Carriage of Goods by Road

1. Main features of the Convention

54. Until recently when carriage of goods by road became a mode of transport to be reckoned with,[25] the scope of national legislation rarely extended beyond matters relating to road safety, issuance of licences and payment of road charges and taxes. Today, with road transport claiming an increasingly large share of regional and

international trade, the need for international regulation, at least, at the subregional level, has become urgent.

55. European countries in recognition of the desirability of standardizing the conditions governing the contract for the international carriage of goods by road, particularly with respect to documents used for such carriage and the carrier's liability elaborated the Convention on the Contract for the International Carriage of Goods by Road (CMR), 1956.

56. The provisions of the Convention may also be applied in situations where the vehicle containing the goods is itself carried over part of the journey by sea, rail, inland waterways or air.[26]

57. The road carrier under the CMR is liable for the total or partial loss of the goods and for damage thereto occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery unless he can prove that the loss, damage or delay was caused by the wrongful act or neglect of the claimant or through circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.[27]

58. When a carrier is liable for compensation in respect of total or partial loss of goods, such compensation is calculated by reference to the value of the goods at the place and time at which they were accepted for carriage.[28]

59. Like CIM, the CMR Convention contains several provisions that respond to commercial needs and interest, such as article 12 of CMR which entitles the sender to stop the goods in transit, to change the place at which delivery is to take place or to deliver the goods to a consignee other than the consignee indicated in the consignment note. Furthermore, the cargo owner is entitled to claim interest on compensation calculated at 5 per cent per annum from the date on which the claim was sent in writing to the carrier.

2. Status of implementation[29]

60. Twenty-one States are contracting parties to the convention. Only one of them is a transit country. No land-locked developing country is a contracting party.

II. INTEGRATION SCHEMES AND SUBREGIONAL TRANSIT AGREEMENTS

61. Transport and communications in general and transit traffic in particular features prominently in many integration schemes. Under the Treaty of the Economic Community of West African States (ECOWAS), for example, in addition to provisions treating this subject in the treaty itself there are two supplementary conventions dedicated to transit traffic.[30] The Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States (PTA) adopted the alternative approach

of elaborating special protocols.[31] But in addition to these protocols some Eastern African States members of PTA have negotiated a separate transit agreement which regulates transit traffic along the so-called Northern Corridor.[32]

A. Treaty of Economic community of West African States

62. The treaty establishing ECOWAS is very comprehensive - aiming to promote cooperation and development in all fields of economic activity, particularly in the fields of industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and fiscal questions and social and cultural matters.

63. The Convention relating to Inter-State Road Transit of Goods (ISRT) seeks to facilitate international transit of goods. Its essential pillars are that:(1) goods should travel in secure vehicles or containers, (2) duties and taxes at risk should throughout the journey be covered by an internationally valid guarantee, (3) the goods should be accompanied by an internationally accepted carnet (the inter-State road transit carnet taken into use in the country of departure, and accepted in the countries of transit and destination: and (4) customs control measures taken in the country of departure should be accepted by the countries of transit and destination.

64. This Convention defines the conditions under which transportation by road must be carried out among ECOWAS members. The central elements of the legal regime are the establishment of: (1) an inter-State road permit and (2) axle load limits, vehicle dimensions and vehicle inspection procedures.

65. ECOWAS guidelines on the harmonization of highway legislation cover the following areas:(1) registration of vehicles, (2) issue of driving licences, (3) organization of technical inspection of vehicles, (4) compilation of statistics on the movement of goods and passengers, (5) organization of road safety measures, (6) supervision of the enforcement of highway legislation, (7) implementation of agreements and conventions on road transport, and (8) organization of road traffic studies. These guidelines also require member States to adhere to the Conventions on Road Traffic and Road Signs.[33]

66. The protocol establishing the ECOWAS brown card for motor vehicle third party liability insurance seeks to protect interstate motorists and victims of road accidents occasioned by vehicles registered in any of the other member States. The system enables victims of road accidents to address their claims to designated insurance companies operating in the domestic market which in turn can seek reimbursement from the actual insurer of the foreign vehicle which caused the accident. For the system to work, each member State must take measures to require an insurance company or companies established in its territory to set up a national bureau which can issue ECOWAS brown cards and act as an agent for similarly constituted insurance companies within ECOWAS.

B. Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States (PTA)

67. PTA's objectives of promoting cooperation and development in all fields of economic and social activity are a mirror image of those set out above in respect of ECOWAS.

68. Initiatives undertaken to facilitate transit traffic operations in the PTA region focused mainly on: (1) efforts to harmonize road tolls, transit charges, axle load and vehicle dimensions, (2) establishment of a PTA road customs and transit declaration document (RCTD), and (3) establishment of a third party motor vehicle insurance scheme based on a PTA yellow card.

69. PTA has adopted for application by its member States common transit charges, and permissible axle loads and vehicle dimensions. Implementation of these standards, however, is likely to take some time. Large vehicles will need to be phased out and there are member States that still consider the common road transit charges to be too low.

70. The international road transit document - RCTD introduced by PTA - has been more successful. It has been able to replace many national documents previously used in transit corridors. The RCTD, for example, replaced 13 documents in the Northern Transit Corridor to the satisfaction of transit traffic users, namely, ports, customs and central banks which require a range of information (statistical classification of goods, weight, value and other relevant data) to discharge their respective functions.

71. The Protocol on the Establishment of a Third Party Motor Vehicle Insurance Scheme, annex XIV to the PTA Treaty was introduced on 3 December 1986. The features of this PTA Yellow Card Scheme are very similar to those of the ECOWAS Brown Card Scheme. The PTA scheme has been implemented so successfully that it has literally replaced existing bilateral and multilaterally agreed schemes within the subregion.[34]

C. The Northern Corridor Transit Agreement

72. The Northern Corridor Transit Agreement (NCTA) covers a broad range of matters related to transit traffic, such as maritime port facilities, transit routes and facilities, frontier facilities and services, customs control, documentation and procedures, and rates, charges and payment arrangements along the Northern Corridor.

73. The general provisions in the body of the agreement are supplemented by protocols which define specific arrangements. The protocol on maritime port facilities, for example, provides for the coastal State to make available warehouses, sheds, open space and other appropriate facilities, to the extent possible, and under the terms and conditions noted in the protocol. It also requires the coastal State to grant ships

registered in, chartered by, or carrying goods for the other contracting parties, and the crew of such ships, treatment equal to that accorded to its own vessels. Furthermore, it prescribes that fees and charges for the use of port facilities should be assessed pursuant to the official tariffs and rates in force at the time and in any case should not exceed those paid by other users under similar circumstances.

74. The protocol on transit routes and facilities, which covers both rail and road transport, guarantees the following services rendered en route by transit countries: (1) first aid services and other assistance in the case of accidents, (2) repair facilities in the case of breakdown of vehicles, (3) fuel filling stations, (4) post and telecommunications offices, (5) facilities for loading, unloading, break bulk, (6) storage areas and buildings, and restaurants and stopover rest facilities. Furthermore, it requires contracting States to ensure that routes within their territories intended for the passage of transit traffic are safe, secure, and in good condition.

75. The customs control regime contained in protocol 3 covers both transport in transport-units which can be effectively sealed by the Customs or in non-sealable transport equipment. It provides for temporary admission of means of transport without requiring security or temporary admission documents. This right includes fuel and lubricating oils contained in the normal tanks of means of transport, as well as spare parts and equipment used in the course of repair and maintenance. Goods consigned from or destined to other contracting parties are not subject to export or import duties and taxes in a transit country. However, a written guarantee as customs security to cover such goods in transit may be required from designated banks or other financial institutions to guarantee payment of customs duties in the event such goods are diverted to home use in the transit country. The customs control regime also specifies the formalities to be fulfilled at the office of departure, offices en route and the office of destination. This customs transit regime is fortified by provisions related to mutual administrative assistance among customs administrations.

76. Protocols 5 and 6 of the NCTA provide the basic framework for rail and road transit operations. The rail protocol outlines a structure for inter-railway cooperation and mandates railways to conclude inter-railway working agreements which permit the handing over of wagons and goods at interchange stations for onward carriage in lieu of transhipment at border stations.

77. The main pillars of the road transport protocol include: (1) the right of vehicles from contracting parties to share in the transit traffic business, (2) reciprocal acceptance of road transport permits issued in other contracting parties, (3) maximum permissible axle loads, and gross vehicle weights established in the protocol,[35] (4) maximum permissible dimensions of vehicles,[36] and 5) application of the uniform liability regime for road carriers.

78. The NCTA also establishes a third party motor vehicle insurance but this has been abandoned in favour of the more widely used PTA scheme.

III. BILATERAL AGREEMENTS

79. There are several bilateral transit agreements between land-locked countries and their transit neighbours. The coverage of these agreements varies in that some of them relate to all aspects of transit (transit facilities, procedures, regulations, etc.) while others are limited to specific transit operations (mode of transport, transit charges, port facilities, etc.)[37] The implementation of these bilateral agreements is also very varied but in general many of them are poorly implemented largely because of the weak institutional arrangements for monitoring the procedures for their application. In some cases political considerations have led to situations where such agreements are ignored. The safeguards against such infringements are generally poor because the mechanisms for settling disputes are inadequate. Some of these agreements are also too broadly and loosely formulated so that their application is cumbersome and difficult.

IV. STRENGTHENING THE LEGAL FRAMEWORK FOR TRANSIT TRAFFIC OPERATIONS

80. An assessment of the international conventions related to transit and the progress related to their ratification or accession highlights not only their particular relevance to the transit question but also at the same time reveals the disconcerting attitude that is still being taken by a number of countries that are not contracting parties to many of them. With respect to one of the most important conventions addressing comprehensively the rights and duties of both land-locked and transit countries, namely the 1965 transit Convention, it is encouraging that about two thirds of the land-locked countries are contracting parties to it. The fact, however, that only three of their transit neighbours have acceded to and ratified it weakens the basis for mutual cooperation within a global legal context. On the other hand the broad adherence of land-locked developing countries and their transit neighbours to the GATT, which addresses very relevant issues related to transit in Article V, is a positive development. The remaining few land-locked developing countries which have yet to accede to GATT should give serious consideration to this issue. With regard to the Kyoto Convention on customs matters the response of several land-locked developing countries and their transit neighbours has also been much more positive than is the case with the more technical Conventions like the TIR Convention, the Convention on Containers and the Conventions on Carriage by Rail and Road to which the overwhelming number of land-locked developing countries and their transit neighbours are not contracting parties.

81. There are various reasons for the limited adherence to the various international Conventions and some of them are not made clear by member States that are not contracting parties to the Conventions. There would, however, appear to be two fundamental concerns in this regard. Firstly, the content and implications of some of the Conventions are not clear to some of the member States. The implicit obligations and prospective benefits after ratification are not necessarily obvious. This is a major challenge to the relevant international and intergovernmental organizations like UNCTAD, the regional economic commissions, Customs Cooperation Council, etc. to

provide technical expertise to those member States that require it so as to clarify the implications and benefits of adhering to these Conventions. Secondly - and this refers in particular to the more technical Conventions - some of them are specifically tailored to the particular needs and technical/economic circumstances of the developed countries. However, the formulation of several of them leaves much leeway in the implementation of their provisions. Additional instruments might therefore be considered which could promote their support by developing countries and subsequently their effective implementation in practice.

82. As highlighted in sections II and III above there are a number of bilateral and subregional agreements and arrangements between land-locked and transit countries. Their implementation varies, depending largely on the political commitment of member States to them but also on the effectiveness of the modalities that are in place to monitor such implementation. The bilateral transit agreements, for example, between Bolivia and Chile and between Paraguay and Argentina, Brazil and Uruguay are being implemented fairly satisfactorily in comparison to those between land-locked countries and their transit neighbours in other regions. The agreements between the United Republic of Tanzania and its land-locked neighbours (Uganda, Rwanda, Burundi and Zambia) have strong political backing but the institutional mechanism to monitor their implementation effectively is weak and this has often led to a number of operational problems in the movement of transit cargo. At the subregional level the Northern Corridor Transit Agreement between Kenya, Uganda, Rwanda, Burundi and Zaire is well articulated but the political environment in the subregion has often been overshadowed by civil strife and economic conflicts. This has adversely affected the smooth implementation of the Agreement in many areas, particularly with respect to border and customs controls, and the availability of transit transport capacity is minimized.

83. Although some of the problems related to the implementation of bilateral and subregional agreements are complex and politically sensitive, several initiatives need to be given serious consideration as their overall impact can contribute significantly to making such agreements a useful tool to improve the transit systems. In this connection special attention should be given to the strengthening of the institutional machinery to monitor the overall coordination of transit-transport planning and policy. In this respect each land-locked country and the transit neighbour(s) might consider establishing some form of coordination committee at a high level to meet periodically to review the adequacy of all transit arrangements, taking into account changing transit situations and procedures. At the operational level, representatives of government institutions dealing with transit matters should also have regular consultations to review the day-to-day implementation process. A similar pattern of coordination might be established at the national level by each land-locked country and its transit neighbours. Arrangements should be made for consultations between the operational executives of the Governments with the users of the transit facilities with a view of the expeditious solution of day-to-day problems.

84. The areas where deliberate and combined efforts must be made by Governments of land-locked countries and their transit neighbours include the promotion of bilateral and subregional legal arrangements for bilateral joint ventures in the field of transport between land-locked developing countries and transit countries; the simplification of

customs and other procedures and formalities and the limitation of documentation requirements; the improvement of communication services; the appointment of representatives to assist in the clearance of the land-locked countries' goods in transit; and facilitation of the movement of road vehicles or railroad rolling stock across the frontiers of the land-locked and transit country.

85. Increased technical assistance by relevant international agencies should be provided as part of the effort to assist the land-locked countries and their transit neighbours in implementing the agreed bilateral and/or subregional agreements.[18] Donor agencies should also use their influence to ensure that the transit-transport programmes they support take into account the safeguards embodied in existing bilateral and subregional agreements and international conventions.

END NOTES

1.See I.

2.General Agreement on Tariffs and Trade.

3.Article V (1).

4.Article V (2).

5.Article V (3),(4) and (5).

6. There is an important proviso under paragraph 6 of the Article, namely that any contracting party shall, however, be free to maintain its requirements of direct consignment existing on the date of the Agreement, in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to the contracting party's prescribed method of valuation for duty purposes.

7.See I.

8.See I.

9.Customs Convention on the International Transport of Goods under TIR Carnets, 1975.

10.See I.

11.International Convention on the simplification and harmonization of Customs procedures.

12.E.1, article 32 (2).

13.E.1, article 23.

14.E.1, articles 17 and 28.

15.E.1, article 16.

16.See I.

17. List of control services include customs control, medico-sanitary inspection, veterinary inspection, phytosanitary inspection, control of compliance with technical standards, quality control and immigration services.

18.See I.

19.See I.

20. The Tanzania Railway Corporation Act for example limits compensation to T.Sh. 5.000.- (equivalent to US$ 15) per package unless the consignor has agreed to additional charges laid down in the Tariff Book.

21.Article 26 of CIM.

22.Article 43 of CIM.

23.International Convention to facilitate the Crossing of Frontiers by Rail, 1952.

24.See I.

25.Seventy-five per cent of transit traffic from Mombasa for example is carried by road.

26.Article 2.

27.Article 17.

28.Article 23.

29.See I.

30. The Convention relating to Inter-State Road Transit of Goods (ISRT) and the Convention on interstate road transport (TRI).

31. On transit trade and transit facilities there are related protocols such as a protocol relating to customs cooperation and clearing and payment arrangements.

32. The Northern Corridor relates to the transit routes linking the port of Mombasa, Kenya, to the land-locked countries of Uganda, Burundi, Rwanda and Zaire.

33.For status of ratification and accessions, see I.

34. Notably the NCTA third party motor vehicle insurance scheme.

35.The maximum permissible axle loads, applicable to axles with four wheels per axle, shall be:

- for single axles:	10 tonnes
- for tandem axles:	16 tonnes
- for triple axles:	24 tonnes

The total maximum laden weight of any vehicle shall in no case exceed 46 tonnes.

36.The dimensions of vehicles used for the carriage of goods in transit shall not exceed:

as regards widths: 2.65m
as regards heights: 4.2m
as regards lengths:

- for rigid chassis vehicles: 11m
- for articulated vehicles: 17.4m
- for truck and drawbar trailer combinations: 18m.

37.See annex II.

38. For details of some of the initiatives being taken by UNCTAD in this area see the background document: "Synopsis of UNCTAD's technical cooperation activities in the area of transit traffic" (UNCTAD/LDC/Misc.12).

(ANNEX I)

State members of UNCTAD which are contracting parties to a selected number of key international conventions relevant to transit traffic operations

	1965 Transit convention[a]	GATT Article V[b]	Kyoto Convention[c]	TIR Convention[d]	1972 Container convention[e]	1982 Frontier control of goods convention[f]	The Hague Convention[g]	Warsaw Convention[h]	CIM[i]	CMR[j]	1968 Road Traffic convention[k]	Hamburg Rules 1978[l]
Land-locked developing countries (Africa)												
Botswana		X						X				X
Burkina Faso	X	X						X				X
Burundi	X	X	X									
Central African Rep	X	X									X	
Chad	X	X						X				
Lesotho	X	X	X			X						X
Malawi	X	X						X				X
Mali	X	X						X				
Niger	X	X						X			X	
Rwanda	X	X	X					X				
Swaziland	X							X				
Uganda		X	X					X				X
Zambia	X	X	X					X				X
Zimbabwe		X	X					X			X	
Transit countries (Africa)												
Algeria			X	X	X		X	X	X			
Angola							X	X				

	1965 Transit convention[f]	GATT Article V[b]	Kyoto Convention[f]	TIR Convention[d]	1972 Container convention[e]	1982 Frontier control of goods convention[f]	The Hague Convention[g]	Warsaw Convention[h]	CIM[i]	CMR[j]	1968 Road Traffic convention[f]	Hamburg Rules 1978[k]
Benin		X						X				
Cameroon		X	X				X	X				
Congo		X						X				
Côte d'Ivoire		X	X				X	X			X	
Ghana		X					X	X				
Guinea							X	X				X
Kenya		X	X				X	X				X
Mauritania		X						X				
Mozambique		X					X	X				
Nigeria	X	X	X					X				X
Senegal		X	X				X	X				X
South Africa		X	X			X					X	
Sudan												
Tanzania, United Republic of		X					X	X				X
Togo		X										
Zaire		X					X	X			X	
Land-locked countries (Asia)												
Afghanistan				X				X				
Bhutan												

	1965 Transit convention[a]	GATT Article V[b]	Kyoto Convention[c]	TIR Convention[d]	1972 Container convention[e]	1982 Frontier control of goods convention[f]	The Hague Convention[g]	Warsaw Convention[h]	CIM[i]	CMR[j]	1968 Road Traffic convention[k]	Hamburg Rules 1978[l]
Lao, PDR	X							X				
Mongolia	X							X				
Nepal	X							X				
Transit countries (Asia)												
China			X		X			X				
Cambodia								X				
India		X	X					X				
Iran, Islamic Rep.of				X			X	X			X	
Pakistan		X	X					X			X	
Russian Federation	X			X	X	X		X		X	X	
Thailand		X										
Viet Nam								X				
Land-locked countries (Latin America)												
Bolivia		X					X					
Paraguay							X	X				
Transit countries (Latin America)												
Argentina		X					X	X				
Brazil		X						X			X	
Chile	X	X		X								X

	1965 Transit convention[f]	GATT Article V[b]	Kyoto Convention[f]	TIR Convention[d]	1972 Container convention[e]	1982 Frontier control of goods convention[f]	The Hague Convention[g]	Warsaw Convention[h]	CIM[i]	CMR[j]	1968 Road Traffic convention[k]	Hamburg Rules 1978[l]
Peru		X					X					
Other States Members of UNCTAD												
Albania				X								
Antigua and Barbuda		X						X				
Armenia												
Australia	X	X	X		X		X	X				
Austria		X	X	X	X	X		X	X	X	X	
Azerbaijan								X				
Bahamas								X				
Bahrain											X	
Bangladesh		X										
Barbados		X					X	X				X
Belarus	X							X			X	
Belize		X			X							
Belgium	X	X	X	X		X	X	X	X	X	X	
Bosnia and Herzegovina												
Bulgaria			X	X	X			X	X	X	X	
Brunei Darussalam					X							
Canada		X	X	X				X				

	1965 Transit convention[a]	GATT Article V[b]	Kyoto Convention[c]	TIR Convention[d]	1972 Container convention[e]	1982 Frontier control of goods convention[f]	The Hague Convention[g]	Warsaw Convention[h]	CIM[i]	CMR[j]	1968 Road Traffic convention[k]	Hamburg Rules 1978[l]
Cape Verde							X					
Colombia		X						X				
Comoros												
Costa Rica		X										
Croatia												
Cuba		X			X		X	X			X	
Cyprus		X	X	X			X	X				
Czech Republic	X	X		X	X	X		X	X	X	X	
Democratic People's Republic of Korea											X	
Denmark	X	X	X	X		X	X	X	X	X		
Djibouti												
Dominica												
Dominican Republic		X						X				
Ecuador							X	X				
Egypt		X					X	X				X
El Salvador		X						X				
Equatorial Guinea								X				
Estonia												
Ethiopia								X				
Fiji							X	X				

	1965 Transit convention[f]	GATT Article V[b]	Kyoto Convention[f]	TIR Convention[d]	1972 Container convention[e]	1982 Frontier control of goods convention[f]	The Hague Convention[g]	Warsaw Convention[h]	CIM[i]	CMR[j]	1968 Road Traffic convention[k]	Hamburg Rules 1978[l]
Finland	X	X	X	X	X	X	X	X	X	X	X	
France		X	X	X		X	X	X	X	X	X	
Gabon		X						X				
Gambia		X	X				X	X				
Georgia												
Germany		X	X	X		X	X	X	X	X	X	
Greece		X	X	X	X	X		X	X	X	X	
Grenada								X				
Guatemala		X						X				
Guinea-Bissau							X	X				
Guyana		X					X	X			X	
Haiti		X										
Holy see												
Honduras												
Hungary	X	X	X	X	X		X	X	X	X	X	X
Iceland		X										
Indonesia		X		X	X			X				
Iraq								X				
Ireland		X	X	X		X	X	X				
Israel		X		X			X	X			X	
Italy		X	X	X		X	X	X	X	X		

	1965 Transit convention[f]	GATT Article V[a]	Kyoto Convention[f]	TIR Convention[d]	1972 Container convention[e]	1982 Frontier control of goods convention[f]	The Hague Convention[g]	Warsaw Convention[h]	CIM[i]	CMR[j]	1968 Road Traffic convention[k]	Hamburg Rules 1978[l]
Jamaica		X					X	X				
Japan		X	X	X			X	X				
Jordan												
Kazakhstan												
Kuwait		X		X			X	X			X	
Kyrgyzstan												
Latvia												
Lebanon							X	X				
Liberia								X				
Libyan Arab Jamahiriya								X				
Liechtenstein					X			X	X			
Lithuania												
Luxembourg		X	X	X		X		X	X	X	X	
Madagascar		X					X	X				X
Malaysia		X	X				X	X				
Maldives		X										
Malta		X		X				X				
Marshall Islands								X				
Mauritania								X				
Mauritius		X					x	X				

	1965 Transit convention[f]	GATT Article V[b]	Kyoto Convention[f]	TIR Convention[d]	1972 Container convention[e]	1982 Frontier control of goods convention[f]	The Hague Convention[g]	Warsaw Convention[h]	CIM[i]	CMR[j]	1968 Road Traffic convention[k]	Hamburg Rules 1978[l]
Mexico		X						X				
Micronesia												
Monaco							X				X	
Morocco		X	X	X	X			X			X	X
Myanmar		X						X				
Namibia			X									
Netherlands	X	X	X	X		X	X	X	X	X		
New Zealand		X			X			X				
Nicaragua		X										
Norway	X	X	X	X		X	X	X	X	X	X	
Oman												
Panama												
Papua New Guinea								X				
Philippines		X					X	X			X	
Poland		X	X	X	X		X	X		X	X	
Portugal		X	X	X		X	X	X	X	X		
Qatar												
Republic of Korea		X	X	X	X			X				
Republic of Moldova												
Romania		X		X	X		X	X			X	X
Saint Kitts and Nevis												

	1965 Transit convention[f]	GATT Article V[b]	Kyoto Convention[f]	TIR Convention[d]	1972 Container convention[e]	1982 Frontier control of goods convention[f]	The Hague Convention[g]	Warsaw Convention[h]	CIM[i]	CMR[j]	1968 Road Traffic convention[k]	Hamburg Rules 1978[l]
Saint Lucia												
Saint Vincent and the Grenadines												
Samoa								X				
San Marino	X										X	
Sao Tome and Principe							X	X				
Saudi Arabia			X					X				
Seychelles											X	
Sierra Leone		X					X	X				X
Singapore		X					X					
Slovakia												
Slovenia												
Solomon Islands												
Somalia							X					
Spain		X	X	X	X	X	X			X		
Sri Lanka		X	X				X	X				
Sudan								X				
Surinam		X										
Sweden	X	X	X	X		X	X	X		X	X	
Switzerland		X	X	X	X	X	X	X	X	X		
Syrian Arab Republic							X	X				

	1965 Transit convention[a]	GATT Article V[b]	Kyoto Convention[c]	TIR Convention[d]	1972 Container convention[e]	1982 Frontier control of goods convention[f]	The Hague Convention[g]	Warsaw Convention[h]	CIM[i]	CMR[j]	1968 Road Traffic convention[k]	Hamburg Rules 1978[l]
Tajikistan												
Tonga							X	X				
Tunisia		X		X				X	X			X
Trinidad and Tobago		X			X		X	X				
Turkey	X	X		X	X		X					
Turkmenistan												
Ukraine	X				X			X			X	
United Arab Emirates												
United Kingdom of Great Britain and Northern Ireland		X	X	X		X	X	X		X		
United States of America	X	X	X	X	X		X	X				
Uruguay		X		X							X	
Uzbekistan												
Vanuatu												
Venezuela		X						X				
Yemen												

a/ Convention on Transit Trade of Land-locked countries, 1965.
b/ General Agreement on Tariffs and Trade.
c/ International Convention on the simplification and harmonization of Customs procedures.
d/ Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention).
e/ Customs Convention on Containers, 1972.
f/ International Convention on the harmonization of frontier controls of goods.
g/ International Convention for the unification of certain rules relating to bills of lading.
h/ Convention for the Unification of certain rules relating to international carriage by air.
i/ International Convention concerning the Carriage of Goods by Rail (CIM).
j/ Convention on the Contract for the International Carriage of Goods by Road (CMR).
k/ Convention on Road Traffic, 1968.
l/ United Nations Convention on the Carriage of Goods by Sea, 1978.

(ANNEX II)

Subregional and bilateral agreements between land-locked developing countries and their transit neighbours relating to transit, rail, road and port facilities

Land-locked developing countries	Sub-regional and/or bilateral transit agreement	Free trade areas	Customs unions	Currency unions	Joint ownership railways	Inter-railway agreements	Bilateral agreement on ports	Reserve port
Botswana	SACU[a] MOU[b]	SADC[c]	SACU[a]					
Burkina Faso	TRIE[a] Côte d'Ivoire, Ghana, Mali, Togo, Benin	CEAO[d] ECOWAS[e]		BCEAO[d]		Côte d'Ivoire	Togo, Côte d'Ivoire, Benin	Côte d'Ivoire
Burundi	NCTA[f] Tanzania, United Rep. of	PTA[f]					NCTA, Tanzania, United Rep. of	Tanzania, United Rep. of
Central African Republic	Cameroon, Gabon, Congo, Equatorial Guinea	UDEAC	UDEAC	Cameroon, Congo				Congo, Cameroon
Chad	Algeria, Cameroon, Central African Rep., Congo	UDEAC[g]	UDEAC	Cameroon Central African Rep., Congo				Congo
Lesotho	SACU, MOU	SADC, PTA	SACU	RMU				
Malawi	Tanzania, United Rep. of, Mozambique, Zambia	SADC, PTA				Mozambique	Tanzania, United Rep. of, Mozambique	Tanzania, United Rep. of, Mozambique
Mali	TRIE, Benin, Côte d'Ivoire, Togo, Burkina Faso	ECOWAS, CEAO		BCEAO		Senegal	Togo, Benin, Mauritania, Côte d'Ivoire, Senegal	Togo, Benin, Côte d'Ivoire, Senegal
Niger	TRIE, Benin, Burkina Faso, Nigeria, Ghana, Côte d'Ivoire	ECOWAS, CEAO		BCEAO			Benin, Togo, Nigeria	Benin, Nigeria
Rwanda	NCTA	PTA					Tanzania, United Rep. of, NCTA	Tanzania, United Rep. of
Swaziland	SACU, MOU	SADC, PTA	SACU	RMU		Mozambique		Mozambique
Uganda	NCTA	PTA				Kenya, Tanzania, United Rep. of	NCTA, Tanzania, United Rep. of	
Zambia	Tanzania, United Rep. of	SADC, PTA			Tanzania, United Rep. of	Tanzania, United Rep. of, Zimbabwe, Zaire, South Africa	Tanzania, United Rep. of	

Land-locked developing countries	Sub-regional and/or bilateral transit agreement	Free trade areas	Customs unions	Currency unions	Joint ownership railways	Inter-railway agreements	Bilateral agreement on ports	Reserve port
Zimbabwe	Mozambique	SADC, PTA				Zambia, Mozambique, South Africa	Mozambique	Mozambique
Afghanistan	Iran,Islamic Rep. of, Pakistan, Russia Federation							Pakistan
Bhutan	India	India	India	India				
Lao, PDR	Thailand						Thailand, Viet Nam	Thailand
Mongolia	Russian Federation, China				Russian Federation			
Nepal	India						India, Bangladesh	India
Bolivia	Argentina, Brazil, Chile, Peru	LAIA[1]			Chile		Chile, Peru	Chile, Peru
Paraguay	Argentina	LAIA, Argentina, Brazil						Argentina

a/ SACU Southern African Customs Union.
b/ MOU Memorandum of Understanding between the Government of South Africa, Botswana, Lesotho and Swaziland.
c/ SADC South African Development Community.
d/ CEAO West African Development Community.
e/ ECOWAS Economic Community of West African States.
f/ PTA Preferential Trade Area for Eastern and Southern African States. g/ UDEAC Central African Customs and Economic Union.
h/ TRIE Convention relating to Inter-State Road Transit of Goods
i/ ALADI Latin American Integration Association.
j/ NCTA Northern Corridor Transit Agreement.
k/ BCEAO Central Bank of West African States.
l/ RMU Rand Monetary Union.